



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**
JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243

BILL LEE
GOVERNOR

(615) 313-2263 FAX: 615-313-5356

DANIELLE W. BARNES
COMMISSIONER

www.state.tn.us/humanserv/

October 11, 2019

Ms. Krista Lee Carsner
Executive Director of Fiscal Review
Tennessee General Assembly
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Re: Amendment of Contract No. 34549-04217

Dear Ms. Carsner:

The following information is provided in support of the proposed amendment of Contract 34549-04217. The Department of Human Services seeks favorable Fiscal Review Committee consideration of this proposed contract amendment.

Background

Under the existing contract, Colyar Technology Solutions, Inc. ("Colyar") has maintained certain software used by the Department to manage the Child and Adult Care Food Program ("CACFP") and the Summer Food Service Program ("SFSP"). In addition to providing data analytics and data hosting services, Colyar provides functionality in areas such as claims processing, viewing and sorting claims based on various criteria, and maintaining compliance with applicable U.S. Department of Agriculture regulations.

Justification

In order to ensure the Department's continued access to Colyar's services and expertise, TDHS seeks to amend the existing contract, which is entirely federally funded. The Department seeks to extend the contract's term by one year and increase the maximum liability. Colyar has been a steadfast business partner, demonstrating sound performance and helping the Department improve accountability. This contract amendment will advance the Department's goal of continuing the enterprise-wide modernization initiative while maintaining accountability and compliance with federal requirements.

Summary

The Department of Human Services seeks favorable consideration of an amendment of its existing contract with Colyar to extend the term, increase the maximum liability, and build upon the successes of the past three years. The proposed amendment will ensure that the Department continues to benefit from the expertise Colyar offers. It will also effect improvements in the contract itself aimed at mitigating risk and ensuring the greatest degree of clarity possible.

Please let me know if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stroud Vaughn", written in a cursive style.

Stroud Vaughn
Senior Associate Counsel

cc: Cherrell Campbell-Street, Deputy Commissioner of Programs and Services, TDHS
Whitney Page, Assistant Commissioner, TDHS
Charles Bryson, Assistant Commissioner Family Assistance and Child Support, TDHS
Wayne Glaus, Chief Information Officer, TDHS
Bryan Chriske, Legislative Procurement Compliance Mgr., Comptroller of the Treasury
Michael Leitzke, Central Procurement Office Sourcing Analyst

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Stroud Vaughn	*Contact Phone:	(615) 708-2118		
*Presenter's name(s):	Whitney Page				
Edison Contract Number: <i>(if applicable)</i>	52482	RFS Number: <i>(if applicable)</i>	34549-04217		
*Original or Proposed Contract Begin Date:	December 1, 2016	*Current or Proposed End Date:	November 30, 2019		
Current Request Amendment Number: <i>(if applicable)</i>		One			
Proposed Amendment Effective Date: <i>(if applicable)</i>		Upon execution and approval			
*Department Submitting:		Department of Human Services			
*Division:		Adult & Family Services			
*Date Submitted:		October 10, 2019			
*Submitted Within Sixty (60) days: <i>If not, explain:</i>		Timely submitted			
*Contract Vendor Name:		Colyar Technology Solutions, Inc.			
*Current or Proposed Maximum Liability:		\$2,334,750.00			
*Estimated Total Spend for Commodities:		Not Applicable			
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2017	FY: 2018	FY: 2019	FY: 2020		
\$212,275.00	\$424,550.00	\$424,550.00	\$212,275.00		
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY: 2017	FY: 2018	FY: 2019	FY: 2020		
\$172,821.81	\$313,799.98	\$368,312.63	\$176,116.82		
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Not Applicable		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Not Applicable		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			Not Applicable		
*Contract Funding Source/Amount:					
		Federal:	\$2,334,750.00		

Supplemental Documentation Required for
Fiscal Review Committee

State:			
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Not Applicable		Not Applicable	
Method of Original Award: <i>(if applicable)</i>		Sole Source Procurement	
<p>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>		<p>Original Projected Cost: \$2,122,750.00 The projected cost was proposed by the contractor, Colyar Technology Solutions, Inc.</p>	
<p>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</p>		<p>Colyar is the sole developer of the software system currently in use by the Department. Amending this contract to extend the term, increase the maximum liability, and add other necessary provisions will enable the Department to continue using the features currently in place and to obtain certain improvements. This eliminates the need to build a new custom solution from scratch.</p>	

Line	Business Unit	Document Type	DOC ID	Line Details	Document Date	Item Description	Category	PO Qty	UOM	Merchandise Amount	Currency	Status	Line Comments	Schedule
1	34549	Purchase Order	2571	Line Details	1/6/2017	Software Maintenance, Technica	81112002	1	DO	274,820.81	USD	Closed	Line Comments	Schedule
2	34549	Purchase Order	2785	Line Details	6/5/2017	Software Maintenance, Technica	81112201	1	DO	1	USD	Closed	Line Comments	Schedule
3	34549	Purchase Order	2787	Line Details	6/5/2017	Software Maintenance, Technica	81112201	1	DO	-102,000.00	USD	Closed	Line Comments	Schedule
4	34549	Purchase Order	2908	Line Details	8/28/2017	Software Maintenance, Technica	81112201	1	DO	73,637.50	USD	Closed	Line Comments	Schedule
5	34549	Purchase Order	2932	Line Details	10/10/2017	Software Maintenance, Technica	81112201	1	DO	240,162.48	USD	Closed	Line Comments	Schedule
6	34549	Purchase Order	3158	Line Details	7/30/2018	Software Maintenance, Technica	81112201	1	DO	24,545.83	USD	Closed	Line Comments	Schedule
7	34549	Purchase Order	3207	Line Details	10/4/2018	Software Maintenance, Technica	81112201	1	DO	24,545.83	USD	Closed	Line Comments	Schedule
8	34549	Purchase Order	3291	Line Details	12/7/2018	Software Maintenance, Technica	81112201	1	DO	98,183.32	USD	Closed	Line Comments	Schedule
9	34549	Purchase Order	3356	Line Details	3/6/2019	Software Maintenance, Technica	81112201	1	DO	24,545.83	USD	Closed	Line Comments	Schedule
10	34549	Purchase Order	3357	Line Details	3/6/2019	Software Maintenance, Technica	81112201	1	DO	9,500.00	USD	Closed	Line Comments	Schedule
11	34549	Purchase Order	3437	Line Details	6/7/2019	Software Maintenance, Technica	81112201	1	DO	98,183.32	USD	Closed	Line Comments	Schedule
12	34549	Purchase Order	3457	Line Details	6/28/2019	Software Maintenance, Technica	81112201	1	DO	88,808.50	USD	Closed	Line Comments	Schedule
13	34549	Purchase Order	3550	Line Details	8/21/2019	Software Maintenance, Technica	81112201	1	DO	49,091.66	USD	Pending	Line Comments	Schedule
14	34549	Purchase Order	3584	Line Details	9/5/2019	Software Maintenance, Technica	81112201	1	DO	24,545.83	USD	Pending	Line Comments	Schedule

928,571.91

Contract Approval – Agency Legal Certification

A completed contract routed for Central Procurement Office (CPO) approval via Edison must be accompanied by this Agency Legal Certification template that has been signed and attached in PDF format.

1. Edison Contract ID #	
2. Contracting Agency Name	
3. Contractor Name	
4. Service Caption	
5. Agency Contact (name, phone, e-mail)	
6. Legal Certification <i>By signing below, the department's legal staff certifies that:</i> <ol style="list-style-type: none"> 1) the contract as submitted includes only CPO template language (unless the agency has obtained an approved rule exception request); 2) the contract is legally sufficient both in form and substance to protect the best interests of the State; and 3) the contract does not contravene applicable law. 	
<hr/> Agency Attorney Signature & Date	
7. (Optional) Alternative to Legal Certification Request <p>Note: If there are extenuating circumstances and a department's legal staff is unable to certify to a contract in the above manner, you must provide a written explanation with Agency Head signature, in the space provided below. Once the explanation is received by the CPO, instructions will be provided to the department as to what will be needed in order to gain approval of the contract, e.g., providing a Microsoft Word version of the contract, etc. <u>Please keep in mind that this alternative will slow down the approval process and should be the exception, not the rule.</u></p> <p>Justification</p>	
<hr/> Agency Head Signature & Date – contracting agency head or authorized signatory	

cy19-14195

Amendment Request


This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	34549-04217	
1. Procuring Agency	Department of Human Services	
2. Contractor	Colyar Consulting Group, Inc.	
3. Edison contract ID #	52482	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	December 1, 2016	
6. Current end date	November 30, 2019	
7. Proposed end date	November 30, 2020	
8. Current Maximum Liability or Estimated Liability	\$ 1,273,650.00	
9. Proposed Maximum Liability or Estimated Liability	\$ 2,334,750.00	
10. Strategic Technology Solutions Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed		
<p>The proposed amendment is necessary in order to maintain continuity of services for the provision of software upgrades and maintenance services by extending the term of the contract as well as increasing the maximum liability. Additionally, this amendment adds two provisions to the contract, with one pertaining to change order payment and the other pertaining to System and Organization Controls audits.</p>		
<p>DHS believes that continued use of the Colyar system will ensure compatibility and improve program integrity in the Child and Adult Care Food Program ("CACFP") and the Summer Food Service Program ("SFSP").</p>		

Agency request tracking #	34549-04217
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract. The amendment does not involve a change in scope.	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)  9-24-19	



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 34549-04217	Edison ID 52482	Contract #	Amendment # 1
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Contractor Legal Entity Name Colyar Technology Solutions, Inc.	Edison Vendor ID 127514
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Amendment Purpose & Effect(s) Extend contract through 11/30/20 and increase maximum liability

Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	End Date: November 30, 2020
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TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): \$ 1,061,100.00

Funding ---

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	\$0.00	\$212,275.00	\$0.00	\$0.00	\$212,275.00
2018	\$0.00	\$424,550.00	\$0.00	\$0.00	\$424,550.00
2019	\$0.00	\$424,550.00	\$0.00	\$0.00	\$424,550.00
2020	\$0.00	\$831,250.00	\$0.00	\$0.00	\$831,250.00
2021	\$0.00	\$442,125.00	\$0.00	\$0.00	\$442,125.00
					\$0.00
TOTAL:	\$0.00	\$2,334,750.00	\$0.00	\$0.00	\$2,334,750.00

American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Winfield Shiers

CPO USE

Speed Code (optional) HS00001107	Account Code (optional) 70803000
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AMENDMENT ONE OF CONTRACT 52482

This Amendment is made and entered by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and Colyar Technology Solutions, Inc., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1 is deleted in its entirety and replaced with the following:
 - B.1. This Contract shall be effective for the period beginning December 1, 2016 ("Effective Date") and ending on November 30, 2020, ("Term"). The Contractor hereby acknowledges and affirms that the State shall have no obligation for Contractor services or expenditures that were not completed within the Term.
2. Contract section C.1 is deleted in its entirety and replaced with the following:
 - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million three hundred thirty-four thousand seven hundred fifty dollars (\$2,334,750.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
3. The following is added as Contract section C.3.c:
 - C.3.c The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.9, without a formal amendment of this Contract based upon the payment rates detailed in the change order and as agreed pursuant to Section A.9, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed two hundred five thousand dollars (\$205,000.00). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.
4. The following is added as Contract section E.10:
 - E.10 Contractor Hosted Services Confidential Data, Audit, and Other Requirements.
 - a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall be in accordance with Federal Risk and Authorization Management Program ("FedRAMP") security standards and shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The

Contractor shall provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

COLYAR TECHNOLOGY SOLUTIONS, INC.:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF HUMAN SERVICES:

DANIELLE BARNES, COMMISSIONER

DATE



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date December 1, 2016	End Date November 30, 2019	Agency Tracking # 34549-04217	Edison ID 52482
Contractor Legal Entity Name Colyar Technology Solutions, Inc.			Edison Vendor ID 127514

Goods or Services Caption (one line only)

Software Maintenance, Technical Support, and hosting Services in connection with the CACFP and SSFP Programs

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # 10.56
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Funding ---

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	\$0.00	\$212,275.00	\$0.00	\$0.00	\$212,275.00
2018	\$0.00	\$424,550.00	\$0.00	\$0.00	\$424,550.00
2019	\$0.00	\$424,550.00	\$0.00	\$0.00	\$424,550.00
2020	\$0.00	\$212,275.00	\$0.00	\$0.00	\$212,275.00
TOTAL:	\$0.00	\$1,273,650.00	\$0.00	\$0.00	\$1,273,650.00

Contractor Ownership Characteristics:

- ☐ Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American
☐ Woman Business Enterprise (WBE)
☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)
☐ Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
☒ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

- ☐ Competitive Selection
☒ Other Colyar Technology Solutions was selected and approved based on an established presence within the State of Tennessee via the Department of Education with similar programs and the need for a proven solution to address time sensitive implementation.

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Winfield Shiers

CPO Use - FA

Speed Code (optional)	Account Code (optional)
HS00001107	7080300



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
COLYAR TECHNOLOGY SOLUTIONS**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and Colyar Technology Solutions, Inc., hereinafter referred to as the "Contractor," is for software maintenance, technical support, and hosting services in connection with the Child and Adult Care Food Program and Summer Food Service Program as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Place of Incorporation or Organization: Arizona

Contractor Edison Registration ID # 127514

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall maintain Child Nutrition Program ("CNP") software which it previously installed for a web based system to manage Child and Adult Care Food Program ("CACFP") and the Summer Food Service Program ("SFSP"). Services provided by Contractor shall at a minimum include the CACFP and SFSP Modules, Pre-screening, Training Registration and Management, Data Analytics, Software Maintenance, and Hosting services specified in Contractor's May 2016 Proposal, attached hereto as Exhibit 1, the terms and conditions of which are incorporated herein by reference. Should any term or condition contained in Exhibit 1 conflict with any term or condition set forth in Sections A through E of this Contract, the terms and conditions of Sections A through E of this Agreement shall be controlling.
- A.3. Software Maintenance. Contractor shall provide the following software maintenance and support services for the Tennessee Department of Human Services ("DHS"):
 - a. Correction of all reported software anomalies. Contractor shall acknowledge problems reported by the State via telephone or email on the same business day and, depending on the severity of the problem, resolve problems as soon as practicable.
 - b. Software Releases. Contractor shall package and deploy software releases to the DHS User Acceptance Test and DHS Production site.
 - c. Database Refresh. Contractor shall update the data in the User Acceptance Test site's database at least two times per year with a copy of the data in the DHS Production database.
 - d. Management Support. Contractor will provide DHS a specific Project Manager as a single point of contact for ongoing support and provide a designated Account Executive assigned by Contractor to address any State questions and provide advice.
 - e. Help Desk/Hot Line. Contractor shall ensure that there is a Help Desk and Hotline to provide support for the State during normal business hours.
 - f. Version Control. Contractor shall maintain a replica copy of the State's software installation and database schema to ensure that software can be reinstalled and functionality restored in the event of a system crash or web files are lost.



- g. Data Analytics. Contractor shall provide maintenance for data analytics software for the five (5) State user licenses that were included with the initial delivery of the data analytics software as well as ongoing support of the software.
- A.4. Hosting Services. The Contractor shall provide a stable and reliable web hosting infrastructure consisting of robust web and database servers and associated current licenses. Contractor shall ensure that network, servers and websites are monitored 24 hours a day, every day of the year, in 5-second intervals, using a blend of third-party products and in-house-developed solutions. Hosting services shall include without limitation:
- a. Corrective maintenance of the technology environment, including hardware, operating system, and connectivity;
 - b. Software licensing, including provision of all software licensing specific to the application, such as Microsoft SQL Server Database licensing;
 - c. Application monitoring, including monitoring network activity, database and website; and
 - e. Management of software deployments to user acceptance testing and production environments, including installation and management.
- A.5. The hosting environment provided by Contractor shall include:
- a. All software licenses, including Microsoft SQL Server 2012;
 - b. Two environments – Production and User Acceptance Testing;
 - c. Access to the application through a T1 bandwidth connection;
 - d. Secure Socket Layer (SSL) technology and firewall protection on the test and production web servers to provide security for communications over the network;
 - e. Intrusion penetration and detection (IPS/IDS) network probes to identify and eradicate network problems and resolve vulnerabilities, including real-time detection of attempted intrusion;
 - f. Nightly backups of the system;
 - g. 24 x 7 x 365 system availability excluding scheduled maintenance windows approved by mutual agreement of the State and Contractor;
 - h. Industry Standard Server Configuration to maximize hardware reliability;
 - i. Patch management as issued by software and hardware vendors;
 - j. Server hardware and software support and monitoring of the environments; and
 - k. Management of all software deployments to the test and production environment.
- A.6. Services provided by the Contractor shall comply with and meet all standards set forth in applicable state federal laws and regulations, including without limitation: 7 CFR Part 226 (CFDA 10.558) and 7 CFR § 225 (CFDA 10.559), as amended; Tennessee Department of Human Services' Policies and Procedures Manual for the Child and Adult Care Food Program, as amended; policy memoranda issued by the United States Department of Agriculture (USDA); all applicable Office of Management and Budget (OMB) circulars; State of Tennessee Enterprise Information Security Policies; all Department of Human Services' program and fiscal policy memoranda issued during the term of this Contract; and any other applicable federal, state or local requirements.
- A.7. In accordance with the terms and conditions of the license agreement set forth in Exhibit 1 of this Contract, the Contractor grants to the State a limited, non-exclusive, non-transferable license to:



- a. access and use of any software provided by Contractor; and
 - b. access and use all work product conceived, created, made, developed or acquired as a result of Contractor's services provided under this Contract.
- A.8. Services provided by the Contractor shall provide USDA Claim functionality to ensure that:
- a. All claims are submitted by Sponsoring Organizations and/or Administrators, and that no other users are permitted to submit claims;
 - b. All Child Nutrition Claims are processed based on monthly meal participation by category multiplied by the applicable USDA reimbursement rate based on participation;
 - c. Meal counts per Sponsoring Organization category are required to process the monthly claims, and that no individual school meal count data are required for claims processing;
 - d. Child Nutrition claims for all Federal and State programs—CACFP and SFSP—are processed during the entire year;
 - e. The following statuses for submitted claims and claims amendments are supported:
 - (1) On-hold
 - (2) Denied
 - (3) To pay list
 - (4) Paid (or other similar terminology to reflect these statuses)
 - f. claims may be manually withheld by CNP claims and CNP Administrators for cause;
 - g. CNP Claims is permitted to place all reviewed claims or amendments into either "on-hold" or "to pay" status;
 - h. CNP Claims has the ability to review the "to pay" list and move claims to "on hold" status if necessary without interference to other claims processing, even for the same Sponsoring Organization, across any date at any time;
 - i. Multiple fiscal years can be processed within the same pay list;
 - j. A payment file is generated upon confirmation of submission for payment by CNP Claims;
 - k. There is a screen that allows CNP Claims to select the sponsor/unit number and the payment type (example: lunch, milk, and regular breakfast);
 - l. Sponsoring Organization administrators have the ability to review their unit's claims and claim amendment status without access to other unit's claims;
 - m. Approved users are permitted based on their role to view claims and sort them based on the following criteria:
 - (1) type of of Sponsoring Organization ("All" must be an option)
 - (2) claim status: submitted, on-hold
 - (3) denied
 - (4) to pay list, paid
 - (5) date range;



- n. The Sponsoring Organization administrator is allowed to submit claims only within the allowed window of submission within USDA defined parameters;
 - o. CNP Claims may be submitted for all Sponsoring Organizations without any time restriction;
 - p. Claims are accepted or denied consistent with the information contained in the application/Agreement;
 - q. Original Claim submission is tagged and each amendment with an audit trail which includes identifying whether the claim is an original or an amendment, an amendment number, the data changed, the ID's of the user that submitted the change, and the date of the amendment;
 - r. an upload mechanism is provided with the flexibility to increase the number of uploads per year as needed;

(Currently, program application information is required once a year, by September 30.)
 - s. CNP Claims, CNP Consultant and CNP Administrators are available to review application information sorted by Sponsoring Organizations online;
 - t. Sponsoring Organization administrators have the ability to enter monthly income and expenditures information as part of the claim;
 - u. Any applications, claims, and other information are rejected that do not meet the edits required by USDA regulations.
- A.9. The State may, at its sole discretion with written notice to the Contractor, request changes in the services required by the State but not otherwise specified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service specifying:
 - (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - (2) the specific effort involved in completing the change(s);
 - (3) the expected schedule for completing the change(s);
 - (4) the maximum number of person hours required for the change(s); and
 - (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
- A.10. Disaster Recovery/Continuity of Operations Plan. The Contractor acknowledges and represents to the State that it has implemented a disaster recovery/continuity of operations plan that may be executed in the event of a natural disaster or man-made disaster. Contractor shall make a copy of such plan available to the State upon request.



- A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.12. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective for the period beginning December 1, 2016, and ending on November 30, 2019. The Contractor hereby acknowledges and affirms that the State shall have no obligation for Contractor services or expenditures that were not completed within this specified contract period.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million two hundred seventy-three thousand six hundred fifty dollars (\$1,273,650.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all



applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Service Description	Amount (per compensable increment)
Maintenance	
CACFP Maintenance	\$77,750.00 per year
SFSP Maintenance	\$57,200.00 per year
CACFP Compliance Maintenance	\$22,000.00 per year
SFSP Compliance Maintenance	\$22,000.00 per year
Pre-screening/Potential Sponsor	\$0. (Included)
Training Registration and Management	\$0 (included)
Hosting	
Production Environment	\$48,000.00 per year
User Acceptance Testing Environment	\$48,000.00 per year
Data Analytics	
Data Analytics (includes 5- state users)	\$19,600.00 per year
Data Analytics (additional users)	\$1,200 per user per year
Additional DHS-requested Dashboards	\$125 per hour
Implementing New Products/Enhancements/Upgrades/Training	\$125 per hour

Maintenance begins 60 days after implementation of each module. Costs will be pro-rated if necessary to adjust for timing differences between implementation of the module and maintenance period.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:



TN Department of Human Services
Fiscal Services Division for CACFP/SFSP 11th Floor
400 Deaderick Street
Nashville, TN 37243
Telephone # 615-313-5567

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Human Services, Adult and Family Services
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
 - b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
 - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of



Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Allette Vayda, Program Director
Community and Social Services – Food Programs
Citizens Plaza Building, 8th Floor
400 Deaderick Street
Nashville, TN 37243
Telephone # (615) 313-3769
FAX # (615) 313-6683

The Contractor:

Richard Roeckner, Vice President of Business Development
Colyar Technology Solutions
22420 N. 18th Drive
Phoenix, AZ 85027
Richard.Roeckner@coylar.com
Telephone # (623) 209-1776
FAX # (623) 209-1751

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.



- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.



- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.



- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for contract payment reductions for failure to meet specified performance standards or liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor,



through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust



statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.



- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f, below), which includes:
 - Attachment A – Attestation Re. Personnel Used In Contract Performance,
 - Exhibit 1 – May 2016 Proposal for Application Support and Hosting
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.
- The obligations set forth in this Section shall survive the termination of this Contract.
- E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions



on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.7. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.



The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.8. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
 - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans



that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.9. Survival. The terms, provisions, representations, and warranties contained in Sections D.16, D.17, D.18, D.19, D.20, E1, and E.7 of this Contract shall survive the completion of performance, termination or expiration of this Contract.

IN WITNESS WHEREOF,

COLYAR TECHNOLOGY SOLUTIONS:



CONTRACTOR SIGNATURE

11/2/16

DATE

Richard Roekner Vice President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HUMAN SERVICES:



RAQUEL HATTER, COMMISSIONER

11/4/16

DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	52842
CONTRACTOR LEGAL ENTITY NAME:	Colyar Technology Solutions
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	[REDACTED]

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION



ATTACHMENT B

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.
- 1.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- 1.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 1.4 The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 1.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State with a statement containing the date of destruction, description of material destroyed, and the method used.
- 1.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- 1.7 No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 1.8 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- 1.9 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.



1. CRIMINAL/CIVIL SANCTIONS:

- 2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (\$5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars (\$1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by I.R.C. §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars (\$1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand dollars (\$1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by I.R.C. §§ 7213A and 7431.
- 2.3 Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his or her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000).
- 2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of I.R.C. §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor must sign, either



with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.